

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
DIVISION OF LOCAL SERVICES

Property Tax Bureau
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**COLLECTION AGENCIES, COLLECTOR FEES AND
DEPUTY TAX COLLECTOR PROCEDURES**

Chapter 729 of the Acts of 1989
(Amending G.L. Ch. 60 §§15 and 92 and adding Ch. 60 §2B)

SUMMARY:

Chapter 729 amends General Laws Chapter 60 by providing a number of changes relating to local tax collections:

- Section 1 adds Section 2B to G.L. Ch. 60, thereby permitting cities and towns to use collection agencies for the collection of certain municipal taxes and charges.
- Section 2 amends G.L. Ch. 60 §15 by increasing certain tax collector fees.
- Section 3 amends G.L. Ch. 60 §92 by instituting various requirements governing deputy tax collector procedures.

GUIDELINES:

I. USE OF COLLECTION AGENCIES FOR THE COLLECTION OF CERTAIN MUNICIPAL TAXES AND CHARGES (Section 1 of Chapter 729: Amends G.L. Ch. 60 by adding §2B).

A. Appointment of Licensed Collection Agencies to Collect Certain Municipal Accounts

1. A local tax collector, in lieu of or in addition to using a deputy collector pursuant to G.L. Ch. 60 §92, may enter into an agreement with one or more private persons, companies, associations or corporations for the provision of collection services.
2. The party providing collection services must be licensed by the Commissioner of Banks to conduct a collection agency or to engage in the Commonwealth in the business of collecting or receiving payment for others of any account, pursuant to G.L. Ch. 93 §§24-28, inclusive.
3. An agreement under this statute may be for the collection of all unpaid personal property taxes and locally imposed excises for which a demand has been made, pursuant to G.L. Ch. 60 §16.

B. Advertisement and Selection Regulations

1. To enter into a collection agreement under this section, a tax collector must first invite by public notice the submission of proposals for such service. The notice must be published in at least one newspaper of local circulation. It must appear once a week for at least two consecutive weeks, and the last appearance must occur at least one week prior to the time specified in the notice for the opening of proposals received.
2. All proposals received must be opened in public at the time specified for such opening.
3. The collector may reject any or all proposals submitted.
4. The collector may not accept other than the lowest responsible bid without specifying in writing the reasons for accepting some other bid.

C. Collection Agency Compensation

1. Any collection agreement under this section may, at the collector's discretion, include the manner in which compensation for such services will be paid. Such compensation, however, may not exceed the greater of:
 - (a) The fees which would otherwise be due the collector under G.L. Ch. 60 §15, or
 - (b) One third of the amount collected on each personal property tax or locally imposed excise, exclusive of any interest and charges.

These alternatives set maximum levels of compensation. Of course, the collector is free to negotiate some lower amount than either the statutory fee or one third of the underlying tax or excise. In addition, compensation may vary (1) in accordance with the particular collection procedures exercised by the collection agency and also (2) on a sliding scale which corresponds with the amount of the underlying tax or excise.

2. If the collection agreement does not include the manner in which compensation for services will be paid, such compensation shall be the greater of the amounts delineated in Section I-C(l)(a) and (b) above.
3. The amount of compensation for collection services, whether determined under Section I-C(l)(a) or (b), or as determined under the agreement, shall be added to the amount of the personal property tax or locally imposed excise which is due and collected as a part thereof by the collection agent or agency.

D. Turnover of Receipts; Collector's Deposit Account

1. All monies received by a collection agency, including collection fees, must be turned over to the collector at least once each week. No deductions may be made prior to this turnover.
2. Each turnover must be accompanied with an itemized statement of all taxes, excises, interest and collection fees collected, setting out all underlying amounts and all interest and other charges which arose from delinquent payment of those underlying amounts.
3. A tax collector who has entered into an agreement for collection services under this section may establish a separate account for the deposit of all monies turned over to him by the collection agency. If the collector enters into an agreement with more than one collection agency, he must establish a separate account for the receipts turned over by each collection agency. Compensation to the collection agency from this account shall not be made for any particular tax collection until the checks, if any, in payment therefore, have been honored.
4. If the collector does not establish a separate account for such receipts, he must turn over to the treasurer, at least weekly, all monies, including collection fees, received by him from the collection agency, pursuant to G.L. Ch. 60 §2. The collector may thereafter authorize the treasurer to pay without further appropriation to the collection agency all monies due as compensation to such agency. Prior to granting such authorization, the collector must certify to the accounting officer that all checks relating to such compensation have cleared. No such payment shall be made for any particular collection, however, until the checks, if any, in payment therefore, have been honored.

E. Agency and Collector Reporting; Collection Agency Bonding Requirements

1. Every collection agency which collects municipal funds pursuant to an agreement under this section must maintain a cash book in which it shall record all monies collected. For each particular collection, the agency must enter the name and address of the party from whom the collection was received. The posting of monies received must be itemized, breaking the payment into (a) the underlying tax or excise amount that was collected, (b) accrued interest and (c) collection fees.
2. Every such collection agency must submit to the collector at least once a month a comprehensive report which relates all activity on all outstanding warrants earlier committed to it and accounts for all monies collected and not a subject of some earlier, comprehensive report.
3. Each tax collector must submit a report to the Commissioner of Revenue for any fiscal year in which he enters into a collection agreement under this section. The report must be submitted on or before August first of the succeeding fiscal year and must list all parties with whom the collector has entered into such agreements and

must include an accounting of all monies collected and all compensation paid under such agreements for the prior fiscal year.

4. Every collection agency which enters into an agreement with a city or town for the collection of taxes and excises must give bond for the faithful performance of its duties in such an amount and on a form prescribed by the Commissioner of Revenue. The bond must be in the name of the collection agency as a legal entity. It will be deemed to include all agents and employees of the agency.

F. Miscellaneous

1. A collection agency which performs collection services for a city or town is subject to the same limitations and remedies for collection as collectors or deputy collectors. These collection remedies include receiving a warrant from the collector to collect a tax or excise, mailing notice of that warrant to a delinquent, and exhibiting that warrant to that delinquent or leaving it at his last residence or place of business.
2. The Commissioner of Revenue is authorized to make and to revise rules, regulations and guidelines to carry out the provisions of this section.

II. INCREASE IN COLLECTOR FEES (Section 2 of Chapter 729:Amends G.L. Ch. 60 §15).

General Laws Ch 60 §15 establishes the amounts of the fees for various collection procedures which are to be added to and collected along with the delinquent tax. The new legislation increases those amounts in three particular instances, as follows:

A. Issuing Warrant

The fee payable under G.L. Ch. 60 §15(9) when a collector issues a warrant to a collection officer has been increased from \$2 to \$5.

This fee belongs to the collector unless a city or town has adopted a bylaw, pursuant to G.L. Ch. 40 §21(13), requiring the collector to pay over such fees into the treasury.

B. Sending Notice of Warrant

The fee payable under G.L. Ch. 60 §15(10) for notice to a delinquent that a warrant to collect has been issued has been increased from \$7 to \$9.

This fee generally is paid over to a deputy collector to whom a warrant to collect has been issued after that deputy has given notice of the warrant to the delinquent. However, a deputy tax collector's compensation is not statutorily fixed by G.L. Ch. 60 §15. The Supreme Judicial Court, in Finer v. Boston, 334 Mass. 234 (1956), stated, "[This] section set[s] forth the interest, charges and fees which may be added to the amount of the tax as a part thereof. They establish as between the taxing authority and the taxpayer certain charges for the cost of collection arising from the taxpayer's delinquency. But they do not purport to fix the compensation to be paid by the city or collector to the deputy." A deputy collector's compensation, therefore, is to be established through an agreement entered into between the collector and his deputy. Tax collectors possess the prerogative to fix the compensation of the deputy collector at or below the fee amounts set out in G.L. Ch. 60 §15. A deputy's compensation can be fixed above these statutory amounts subject to the adequacy of the city or town's appropriation.

C. Exhibiting or Delivering the Warrant

The fee payable under G.L. Ch. 60 §15(11) for exhibiting or delivering a warrant to a delinquent has been increased from \$12 to \$14.

This fee may be imposed and collected only if a warrant is physically presented to a delinquent or personally delivered to the delinquent's last known residence or place of business. Under no circumstances may this fee be charged for mailing a warrant to a delinquent. (See Property Tax Bureau Informational Guideline Release No. 89-215, "Collector's Fee for Exhibiting a Tax Warrant."). Assuming the collector has fixed the deputy's compensation at the fee amount, this fee, like that for sending notice that a warrant has been issued, may only be paid over to a deputy after he has performed the required service, collected the amount owed and turned over all receipts to the collector.

III. DEPUTY COLLECTOR PROCEDURES (Section 3 of Chapter 729:Amends G.L. Ch. 60 §92).

- A. Appointment of Deputy Collectors; Appointments Are No Longer Subject to Commissioner of Revenue Approval:
1. A tax collector may appoint and remove the deputy tax collector as he deems expedient. However, a tax collector may not appoint an assessor to serve as a deputy collector. A tax collector may lawfully appoint as deputy collectors persons who are not residents of or taxable within the municipality where they will perform collections.
 2. Deputy tax collector appointments must not violate the conflict of interest prohibitions of G.L. Ch. 268A.
 3. Deputy collector appointments are no longer subject to approval by the Commissioner of Revenue. Any local approval necessary is wholly a matter of local policy or bylaw.
- B. Warrants; Checks Made Out to Municipality
1. As a general matter, deputy collectors should only be given warrants for the collection of delinquent personal property taxes and locally imposed excises for which a demand has been made pursuant to G.L. Ch. 60 §16.
 2. A deputy tax collector may not receive checks for tax payments which are made out to him as payee nor may he endorse any instrument which he receives as a payment for taxes. Instead, all checks received by him must be made out to the municipality for which he is a collection officer. All materials and notices sent by a deputy seeking payments from delinquents must state that the municipality, not the deputy, be made the payee.
- C. Deputy Accounting and Reporting Requirements
1. Every deputy tax collector must maintain a cash book in which he must record all monies collected. For each particular collection, the deputy must enter the name and address of the party from whom the collection was made. The posting of monies received must be itemized, breaking the payment into (a) the underlying tax or excise amount (b) accrued interest and (c) collection fees.
 2. Every deputy collector must submit to the collector at least once a month a comprehensive report which describes all activity on all outstanding warrants earlier committed to him; it must also include an accounting of all monies collected and not a subject of some earlier, comprehensive report.
- D. Deputy Deposit Accounts; Turnover Requirements; Deputy Compensation When Collector Maintains Deputy Deposit Account
1. A tax collector who appoints a deputy collector under this section may establish a separate, joint signature bank account with the deputy collector for the deposit of all monies turned over to him by the deputy collector. The collector must transfer to the treasurer, at least once a week, all funds which have cleared from such account, including interest earned on such funds but excluding collection fees.
 2. Each deputy must either turn over to the collector, at least weekly, all monies received in his capacity as deputy collector, including collection fees, or he must deposit such monies, including collection fees, within 48 hours of receipt in the collector's deputy account established to receive such monies. A deputy may not deposit municipal funds in a personal bank account nor may he maintain a personal bank account in the name of a municipality. This requirement precludes, of course, a deputy collector's investing or otherwise using tax receipts to accrue interest or other financial gain for any but the municipality's benefit.
 3. Each deputy turnover to the collector must be accompanied by an itemized statement of all taxes and excises collected, setting out all underlying amounts and all interest and collection fees which arose from delinquent payment of those underlying amounts.
 4. If instead of turning over monies collected directly to the collector, the deputy deposits such monies in the collector's deputy deposit account, the deputy must, for each deposit, provide to the collector a statement itemizing the monies deposited.
 5. A deputy collector may not withdraw any monies from the collector's deputy account except the amount of the collector's fees due under G.L. Ch. 60 §15(10) and (11). The deputy may withdraw such compensation, however, only under the following circumstances:

- (a) his agreement with the collector specifies that such collector's fees shall belong to the deputy, and
 - (b) the city or town has not by by-law ordered that such fees be paid over to the treasurer.
6. All checks written against the collector's deputy account shall require the signatures of both the collector and the deputy collector as co-drawers in order to be duly payable.
7. If by agreement the deputy is authorized to withdraw fees from the collector's deputy account, each particular withdrawal must be approved by the collector's signing the withdrawal check as co-drawer. Such withdrawal cannot be made for any particular collection until the checks, if any, in payment therefore, have cleared.

E. Deputy Compensation When Collector Does Not Maintain Deputy Deposit Account

1. If the collector does not establish a separate account for the deposit of deputy receipts, he must turn over to the treasurer, at least weekly, all monies received by him from the deputy collector, excepting the amount of the collector's fees due under G.L. Ch. 60 §15(10) and (11). The collector may retain such fees and pay them when due to the deputy collector without further appropriation, if:
- (a) his agreement with the deputy specifies that such collector's fees shall belong to the deputy, and
 - (b) the city or town has not by by-law ordered that such fees be paid over to the treasurer.
2. No compensation shall be paid to the deputy collector for any particular collection, however, until the checks, if any, in payment therefore, have been honored.

The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management.

The Division regularly publishes IGRs (informational Guideline Releases detailing legal and administrative procedures) and the BULLETIN (announcements and useful information) for local officials and others interested in municipal finance.

P.O. Box 9655, Boston, MA 02114-9655 (617) 626-2300
